

Amendment No. 1 to SB0007

Ford
Signature of Sponsor

AMEND Senate Bill No. 7*

House Bill No. 316

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

By deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 38, Chapter 7, Part, is amended by adding the following as a new, appropriately designated section:

(a) Except as provided in subsection (c) it is an offense for the chief medical examiner, a county medical examiner, or pathologist designated pursuant to § 38-7-105, or any agent or employee thereof, to contract with or grant an unauthorized person or an external entity authorization to photograph, videotape, or otherwise capture visual images, or audio recordings in whatever form of a deceased human body, a human autopsy or a body immediately prior to, during or immediately following such an autopsy.

(b) Nothing in this section shall prevent the chief medical examiner, a county medical examiner, or pathologist designated pursuant to § 38-7-105, or any agent or employee thereof, from carrying out training efforts or his or her statutory responsibilities.

(c)

(1) A person is not considered "unauthorized" for purposes of subsection (a) if such person photographs, videotapes, or otherwise captures visual images, or audio recordings in whatever form of a deceased human body, human autopsy or a body immediately prior to, during or immediately following such an autopsy if it is done with the express written consent or at the direction of:

(A) The legal representative of the deceased;

(B) A law enforcement agency or district attorney general, for official use only;

(C) A court order or subpoena; or

(D) An attorney representing a defendant in a criminal case where the original photographs, images or records of the chief medical examiner, a county medical examiner, coroner or pathologist designated pursuant to § 38-7-105 are not available through discovery or are otherwise not sufficient for the defense of such defendant.

(2) If consent is given by the legal representative of the deceased, the representative shall provide, at the same time as the written consent form, the chief medical examiner, county medical examiner, or pathologist designated pursuant to § 38-7-105 with a certified copy of the representative's letters testamentary, or other court documents, showing that such person is the lawful representative of the deceased.

(3) If a lawful heir or legatee of the deceased objects to consent being given by the legal representative to photograph or record the deceased as provided in subsection (a), such heir or legatee may file an action in a court of record in the county where the body is located or the consent was given to enjoin any such photographing or audio recording. The court may act upon the request for injunction and grant such relief in the manner provided by law.

(d) A chief medical examiner, a county medical examiner, or pathologist designated pursuant to § 38-7-105, or any agent or employee thereof, shall incur no criminal or civil liability for permitting a person to photograph, videotape, or otherwise capture visual images, or audio recordings in whatever form of a

deceased human body or a human autopsy or a body immediately prior to, during or immediately following an autopsy as prohibited by subsection (a) if such official is presented with documents showing such person is the lawful representative of the deceased as required by subsection (c).

(e) To the extent that the chief medical examiner, a county medical examiner, or pathologist designated pursuant to § 38-7-105, or any agent or employee thereof, is a covered entity under the privacy regulations promulgated pursuant to the federal Health Insurance Portability and Accountability Act of 1996, nothing in this section shall be construed to preempt any provisions of those regulations that provide greater protection of the deceased's privacy than does this section.

(f)

(1) A violation of subsection (a) is a Class A misdemeanor punishable by fine only.

(2) A violation of subsection (a) is a Class A misdemeanor punishable by fine or imprisonment if the chief medical examiner, a county medical examiner, coroner or pathologist designated pursuant to § 38-7-105, or an agent or employee thereof, receives compensation or other thing of value as an inducement to violate this section.

SECTION 2. This act shall take effect on July 1, 2005, the public welfare requiring it.